

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL R. FARRIS,

Plaintiff,

V.

JO ANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

Case No. C03-5044FDB

ORDER AMENDING JUDGMENT

Plaintiff moves to amend the Judgment in this matter to increase the amount of attorney's fees owed and to further conclude that the Government was not substantially justified in its defense as a whole, and not just one issue. The Government agrees with the proposition that the law regarding substantial justification is a single, threshold finding applicable to the entire case. *See Commissioner, INS v. Jean*, 496 U.S. 154, 160 (1990). That is, the Government's position is either entirely substantially justified, or it was not at all. Subsequent to Plaintiff's Motion to Amend Judgment, the Ninth Circuit ruled in this case that the Commissioner was substantially justified and denied Plaintiff's request for EAJA fees. *Farris v. Barnhart*, No. 04-35270, October 25, 2005. Therefore, this Court must amend its judgment to conform to the Ninth Circuit's supervening, controlling authority.

ORDER - 1

1 ACCORDINGLY, IT IS ORDERED:

- 2 1. Plaintiff's Motion to Amend Judgment [Dkt. # 38] is DENIED;
- 3 2. Defendant's Rule 60(B) Motion for Relief from Judgment [Dkt. # 39] is GRANTED;
- 4 3. The Court's Order of October 17, 2005 [Dkt. # 36] is AMENDED as follows:

5 Because the Commissioner's position was substantially justified,

6 Plaintiff's request for fees and expenses pursuant to the Equal Access to Justice Act,
7 28 U.S.C. § 2412 is DENIED. Plaintiff is awarded costs in the amount of \$75.00
8 pursuant to 28 U.S.C. § 1920.

9 4. The Clerk shall enter an AMENDED JUDGMENT reflecting the above amendment.

10 DATED this 15th day of December, 2005.

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12 FRANKLIN D. BURGESS
13 UNITED STATES DISTRICT JUDGE
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